

October 23, 2009

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0801138**

BRADLEY J. NELSON
Code Enforcement Appeal

Location: 21318 – 111th Avenue Southwest

Appellant: **Bradley J. Nelson**
PO Box 2081
Vashon, Washington 98070
Telephone: (206) 463-5854

King County: Department of Development and Environmental Services (DDES)
represented by Sheryl Lux
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 205-1525
Facsimile: (206) 296-6604

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny the appeal; extend time for compliance
Department's Final Recommendation:	Deny the appeal, but waive civil penalty; extend time for compliance
Examiner's Decision:	Deny the appeal; waive civil penalty; and extend time for compliance

SUMMARY OF DECISION:

The property owner's appeal of a notice of code violation is granted, in part, and denied, in part. Civil penalty waived, and the date to bring property into compliance with the King County Code is extended.

ISSUES/TOPICS ADDRESSED:

Construction of a deck without required permits; waiver of penalty for code violation by prior owner

EXAMINER PROCEEDINGS:

Hearing opened:

October 15, 2009

Hearing closed:

October 15, 2009

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On August 3, 2009, the King County Department of Development and Environmental Services (DDES) issued a notice of King County Code Violation, Civil Penalty Order, Abatement Order, Notice of Lien, Duty to Notify ("Notice and Order") to Bradley Joseph and Desiree Berrest Nelson. The property subject to the Notice and Order is located at 21319 - 111th Avenue SW in unincorporated King County. Bradley Joseph and Desiree Berrest Nelson are the owners of the subject property.

The Notice and Order alleged violation of the King County Code for the construction of a deck over 30 inches above grade without required permits.

2. A timely appeal of the Notice and Order was filed by Bradley Nelson on August 19, 2009. The Statement of Appeal asserts that the property was purchased by the Nelsons in October of 2006, with the deck already constructed and no rail. The deck was constructed by the prior owner. The appellant has subsequently constructed a rail around the perimeter of the deck.
3. During an inspection of the property by the DDES code enforcement officer in October 2008, Mr. Nelson was informed that a permit was required for the deck. The code enforcement officer understood that a permit application would be submitted; however, no application has been received by DDES.
4. The appellant has employed a consultant to assist him in the process of responding to this notice of code violation, and to assist in obtaining the required building permit and inspections.

CONCLUSIONS:

1. The violation of the King County Code alleged by the August 3, 2009 Notice and Order existed on the site at the time the subject property was acquired by Bradley Joseph and Desiree Berrest Nelson, and continues to exist. Although Mr. Nelson has constructed a railing to improve the safety of the deck and adjacent stairs, a building permit for the deck and an inspection are required.
2. The appeal of the subject Notice and Order should be denied and the appellant should be allowed a reasonable period of time to apply for and obtain the building permit and inspections required by the King County Code. Thirty days is a reasonable period of time to allow the appellant to request a pre-application meeting with DDES, and thirty days from the date of that meeting is a reasonable period of time to allow for the submission of a complete building permit application to correct the King County Code violation.

3. The property owner has demonstrated that the code violation that is the subject of this proceeding was caused by other persons who were not the agents of the property owner, and who acted without the property owner's knowledge or consent. The current property owner was not aware that a code violation existed on the property until it was brought to the appellant's attention by DDES. Therefore, pursuant to KCC 23.36.030.b., the property owner is responsible only for correction of the violation, and no civil penalty should be assessed against the property owner.
4. If the current property owner (appellant) fails to complete the application for a building permit to correct the violation, King County should abate the violation in a manner provided by King County Code, and the cost of abatement should be charged as a lien upon the property.

DECISION:

The appeal of Bradley Nelson is denied, provided that the civil penalty assessed by the August 3, 2009 Notice and Order is waived. The property owner is allowed through November 23, 2009 to request a pre-application meeting with DDES for a building permit for the deck which is the subject of this Notice and Order. Not later than 30 days after the conduct of the pre-application meeting, the appellant shall submit a complete building permit application for the deck.

If the property owner fails to accomplish the permitting of the deck that is the subject of this Notice and Order within the said time limits, DDES may proceed to abate the violation on the subject property pursuant to KCC Chapter 23.

ORDERED this 23rd day of October, 2009.

James N. O'Connor
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within 21 days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE OCTOBER 15, 2009, PUBLIC HEARING ON DEPARTMENT OF
DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0801138

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Sheryl Lux, representing the Department and Bradley J. Nelson the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	Department of Development and Environmental Services (DDES) staff report to the Hearing Examiner for E0801138
Exhibit No. 2	Copy of the Notice & Order issued August 3, 2009
Exhibit No. 3	Copy of the Notice and Statement of Appeal received August 19, 2009
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5	Copy of Current Assessor's records
Exhibit No. 6	Copy of 2002 and 2007 aerials
Exhibit No. 7	Copy of GIS maps showing critical areas and buffer
Exhibit No. 8	Copies of photos taken by Officer Sheryl Lux on October 3, 2008
Exhibit No. 9	Archive records from the Assessor's Office showing floor plan and front deck
Exhibit No. 10	Residential client detail report
Exhibit No. 11	Picture gallery for listing 26136566
Exhibit No. 12	Set of three photos taken October 6, 2009

JNOC:vsm
E0801138 RPT